

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PAUL M HITES
Claimant

APPEAL NO. 07A-UI-00036-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 07/30/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 22, 2006, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on January 18, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Deborah Beighley participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides employees to client businesses either on a temporary or indefinite basis. The claimant worked on an assignment at Con-Trol Container Manufacturing from June 28, 2004, to November 29, 2006. He worked in the shipping department. The employer discharged the claimant on November 29, 2006, after the claimant directed verbal abuse and profanity toward a coworker with a disability, in violation of a known work rule prohibiting verbal harassment. The claimant had been counseled in the past for being verbally abusive.

The claimant had called and provided a telephone number to participate in the hearing but was not available at the time of the hearing when called by the administrative law judge. The administrative law judge left a message on his voicemail. After the hearing concluded, the claimant called approximately 50 minutes after the scheduled time of the hearing. When asked why he wasn't available at the time of the hearing, he stated that his cellular phone did not have reception when he was in his home. He further stated that he thought the hearing was at 9:00 a.m. but did not call then because his child had destroyed the hearing notice and he did not have a number to call.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance rules provide that a hearing can be reopened if the party shows good cause for his failure to participate in the hearing. The claimant has not established good cause for being unavailable for the hearing. If he thought the hearing was at 9:00 a.m. and no longer had the hearing notice, he could have called his local Workforce Development Center to obtain the necessary contact information for the Appeals Bureau.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 22, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw